

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Time Warner Cable San Antonio LP)	CSR 7640-E, CSR 7641-E & CSR 7647-E
)	
Time Warner Entertainment-Advance/Newhouse Partnership)	CSR 7650-E, CSR 7651-E, CSR 7652-E & CSR 7653-E
)	
Petition for Determination of Effective Competition in Forty Texas Communities)	

MEMORANDUM OPINION AND ORDER

Adopted: April 3, 2008

Released: April 4, 2008

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Time Warner Cable San Antonio LP and Time Warner Entertainment-Advance/Newhouse Partnership (collectively “Time Warner”), hereinafter referred to as “Petitioner,” has filed with the Commission seven petitions pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable system serving the Communities is subject to effective competition pursuant to Section 623(1)(1)(B) of the Communications Act of 1934, as amended (“Communications Act”)¹ and the Commission’s implementing rules,² and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”) and Dish Network (“Dish”). The petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(1) of the Communications Act and Section 76.905 of the Commission’s rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

II. DISCUSSION

3. Section 623(1)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video

¹See 47 U.S.C. § 543(a)(1).

²47 C.F.R. § 76.905(b)(2).

³47 C.F.R. § 76.906.

⁴See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁵See 47 C.F.R. §§ 76.906 & 907.

programming distributors (“MVPD”), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.⁶ This test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁷

5. Turning to the first prong of this test, it is undisputed that these Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁸ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.⁹ We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Communities to support their assertion that potential customers in the Communities are reasonably aware that they may purchase the service of these MVPD providers.¹⁰ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹¹ and Time Warner indicates that the program offerings are available on the websites of both DIRECTV and Dish, and we have reviewed their websites and confirmed that their program offerings meet the test.¹² Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Communities because of their national satellite footprint.¹³ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in the Communities.¹⁴ Petitioner sought to determine

⁶47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁷47 C.F.R. § 76.905(b)(2)(i).

⁸*See* Petition CSR 7640-E at 4-5; Petition CSR 7641-E at 5-6; Petition CSR 7647-E at 4-5; Petition CSR 7650-E at 4-5; Petition CSR 7651-E at 4-5; Petition CSR 7652-E at 4-5; Petition CSR 7653-E at 4-5.

⁹*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

¹⁰47 C.F.R. § 76.905(e)(2).

¹¹*See* 47 C.F.R. § 76.905(g). *See also* Petition CSR 7640-E at 5-6; Petition CSR 7641-E at 6-7; Petition CSR 7647-E at 5-6; Petition CSR 7650-E at 5-6; Petition CSR 7651-E at 5-6; Petition CSR 7652-E at 5-6; Petition CSR 7653-E at 5-6.

¹²*See* Petition CSR 7640-E at 6; Petition CSR 7641-E at 7; Petition CSR 7647-E at 6; Petition CSR 7650-E at 6; Petition CSR 7651-E at 6; Petition CSR 7652-E at 6; Petition CSR 7653-E at 6.

¹³*See* Petition CSR 7640-E at 7; Petition CSR 7641-E at 6-7; Petition CSR 7647-E at 7; CSR 7650-E at 7; CSR 7651-E at 7; CSR 7652-E at 7; CSR 7653-E at 7.

¹⁴Petition 7640-E at 7-9; Petition CSR 7641-E at 7-8; Petition CSR 7647-E at 7-8; Petition CSR 7650-E at 7-8; Petition CSR 7651-E at 7; Petition CSR 7652-E at 7; Petition CSR 7653-E at 7-8. With regard to Petitions CSR 7640-E (Blanco), CSR 7641-E (China Grove and Scenic Oaks), CSR 7647-E (Stockdale), and CSR 7650-E

(continued....)

the competing provider penetration in the Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code plus four basis.¹⁵

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁶ as reflected in Attachment A, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Communities listed on Attachment A.

III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Time Warner Cable San Antonio LP, and Time Warner Entertainment-Advance/Newhouse Partnership **ARE GRANTED**.

10. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

11. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission’s rules.¹⁷

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
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(Bartlett), Time Warner is unable to determine which MVPD is the largest in these communities because the DBS subscribership data obtained from SBCA is aggregated and does not break down the individual subscribership of each DBS provider. Nevertheless, Time Warner argues that it is subject to effective competition because, in addition to DBS penetration exceeding 15 percent of the occupied households, the number of Time Warner subscribers also exceed 15 percent and the Commission has recognized that in such cases the second prong of the competing provider test is satisfied..

¹⁵Petition CSR 7640-E at 8-9; Petition CSR 7641-E at 8-9; Petition CSR 7647-E at 8-9; Petition CSR 7650-E at 8-9; Petition CSR 7651-E at 7-8; Petition CSR 7652-E at 7-8; Petition CSR 7653-E at 4-5. A zip code plus four analysis allocates DBS subscribers to a franchise area using zip code plus four information that generally reflects franchise area boundaries in a more accurate fashion than standard five digit zip code information.

¹⁶Petition CSR 7640-E at 8-9 and Exhibit C; Petition CSR 7641-E at 9 and Exhibit C; Petition CSR 7647-E at 8-9 and Exhibit C; Petition CSR 7650-E at 8-9 and Exhibit C; Petition CSR 7651-E at 7-8 and Exhibit C; Petition CSR 7652-E at 7-8 and Exhibit C; Petition CSR 7653-E at 7-8 and Exhibit C.

¹⁷47 C.F.R. § 0.283.

ATTACHMENT A

CSRs 7640-E, 7641-E, 7647-E, 7650-E, 7651-E, 7652-E & 7653-E

COMMUNITIES SERVED BY TIME WARNER CABLE SAN ANTONIO LP AND TIME WARNER ENTERTAINMENT ADVANCE/NEWHOUSE PARTNERSHIP

CSR 7640-E

TIME WARNER CABLE SAN ANTONIO LP

Communities	CUID	CPR*	2000 Census Household	Estimated DBS Subscribers
Blanco	TX2197	57.12%	576	329

TIME WARNER CABLE SAN ANTONIO LP

CSR 7641-E

Communities	CUIDS	CPR*	2000 Census Household	Estimated DBS Subscribers
Balcones Heights	TX0519	16.28%	1437	234
Bulverde	TX2371	53.33%	1292	689
Bexar County	TX0478	22.41%	35903	8045
China Grove	TX0699	56.93%	404	230
Cibolo	TX0491	26.10%	1092	285
Converse	TX0486	21.89%	3837	840
Elmendorf	TX1754	43.36%	226	98
Fair Oaks Ranch	TX2335	26.02%	1683	438
Garden Ridge	TX1092** TX2158	23.0%	704	164
Grey Forrest	TX0521	28.49%	179	51
Helotes	TX0936	24.07%	1471	354
Kirby	TX0533	17.75%	2975	528

La Coste	TX1169	25.48%	416	106
Live Oak	TX0490	18.46%	3429	633
Marion	TX1448	45.01%	371	167
New Braunfels	TX0282** TX1272	19.45%	13558	2637
Scenic Oaks(Unincor)	TX2205	42.77%	1190	509
Schertz	TX0494	24.95%	6604	1648
Sequin	TX0211** TX1257	31.93%	7526	2403
City of Selma	TX0489	21.68%	286	62
City of Shavano Park	TX0528	16.38%	629	103
City of Somerset	TX1110	29.24%	513	150
City of Windcrest	TX0488	17.79%	2232	397

TIME WARNER CABLE SAN ANTONIO LP

CSR 7647-E

Communities	CUIDS	CPR*	2000 Census Households	Estimated DBS Subscribers
City of Stockdale	TX1014	47.28%	497	235
City of Bandera	TX1021** TX2155	62.99%	408	257

TIME WARNER ENTERTAINMENT-ADVANCE/NEWHOUSE PARTNERSHIP

CSR 7650-E

Communities	CUIDS	CPR*	2000 Census Households	Estimated DBS Subscribers
City of Bartlett	TX0929** TX0930	33.98%	571	194
City of Granger	TX0931	40.04%	502	201

TIME WARNER ENTERTAINMENT-ADVANCE/NEWHOUSE PARTNERSHIP**CSR 7651-E**

Communities	CUID	CPR*	2000 Census Households	Estimated DBS Subscribers
City of Florence	TX1078	56.96%	381	217

TIME WARNER ENTERTAINMENT-ADVANCE/NEWHOUSE PARTNERSHIP**CSR 7652-E**

Communities	CUIDS	CPR*	2000 Census Households	Estimated DBS Subscribers
City of Fredericksburg	TX0063** TX2157	41.62%	3784	1575

TIME WARNER ENTERTAINMENT-ADVANCE/NEWHOUSE PARTNERSHIP**CSR 7653-E**

Communities	CUIDS	CPR*	2000 Census Households	Estimated DBS Subscribers
City of Lockhart	TX0291	23.41%	3627	849
City of Luling	TX0725	27.36%	1791	490
Town of Martindale	TX0896	18.07%	332	60
Village of Wimberley	TX0894	41.43%	1576	653

*CPR = Percent of competitive DBS penetration rate.

** - The communities of Garden Ridge, New Braunfels, Sequin, Bandera, Bartlett, and Fredericksburg each have two CUIDS that Time Warner operates as a single franchise area pursuant to an agreement with the local franchise authorities.